

**MALABAR TOWN COUNCIL REGULAR MEETING**  
**July 18, 2016                      7:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

**A.     CALL TO ORDER:**

The meeting was called to order at 7:35 pm by Council Chair Mayor Phil Crews. CM Korn led the prayer and pledge.

**B.     ROLL CALL:**

COUNCIL CHAIR:	Mayor PHIL CREWS
VICE-CHAIR:	BRIAN VAIL
COUNCIL MEMBERS:	GRANT BALL, excused
	DON KRIEGER
	DICK KORN
	RICHARD KOHLER
TOWN ADMINISTRATOR:	DOUGLAS HOYT
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For the Record, the Fire Chief Christopher Robinson was also present. Outside Auditor Raymond Bastin was also present.

**C.     ADDITIONS, DELETIONS, CHANGES APPROVAL OF AGENDA** Mayor wants to add one item that is time sensitive and is the contradictions in the Home BTR regulations.

**D.     APPROVAL OF THE MINUTES:**

**1. Regular Council Meeting of 6/20/16**

**Exhibit:** Agenda Report No. 1

**Recommendation:** Request Approval

**MOTION:** CM Vail / CM Kohler to approve RTCM 6/20/16 as corrected. Discussion: Mayor stated on Pg 3, motion from Krieger/Ball to rescind not reconsider.

**VOTE:** All Ayes.

**E.     SHERIFF REPORT:** Lt. Gamin gave brief stats for June – they responded to 5,600 calls for assistance in south Precinct; 352 from Malabar; ag marine patrol, 4X4 trucks. They ran traffic detail seven times during the month and issued 27 traffic citations.

**F.     AUDITOR'S REPORT FOR FY 2014/15 – Ray Bastin, Withum**

Merged with larger firm. Done the audit here several years. GASB 68 slowed some of the timing. Pg 1, auditor's opinion. It is a clean opinion. Pg. 2, 2<sup>nd</sup> para, prior period adjustment due to GASB, so it impacted prior years. Last para discusses the other standards.

Pg 3, Management Response, Assets and deferred exceeds the outflows. GASB changed the term-deferred revenue and deferred liability to inflows and outflows. It is just terminology. Second bullet, P5 5, govt wide financial statements from GF does not include assets and reserves. Net pension liability – future liabilities. In past you just estimated. Now it has to go on balance sheet. Pg 6, compared to 2014, advalorum increased. Expenses also increased. Ad valorum by 36K 1.8 from 1.66, public safety increased. Pg 7 & 8 discussion and analysis. Pg 10 govt wide, long-term debt and assets. Net position 3,568,000 – which is good. Pg 11 is your income statement. Loss of 205K for the year. It is restated due to GASB 68. Next page, numbers are different. Pg 13, rev, 1.5mil; exp 1.6 mil with deficiency It is different from Govt wide. Pg 15, 16 begins the footnotes, accounting procedures, Pg 17 capital assets. Pg 18, Pg 20 the new accounting standards. GASB 68. 323K is everything before FY 2015. Pg 22, AP, Footnote 7 thru page 28 are FRS disclosures requirements.

Pg 29, copier's town leases. Footnote 9 long-term obligations. Footnote 10, 11, 12 are misc disclosures. Pg 31 budget, Budget Adj and actual. Net deficiency is almost 34K.

Finally, they give the clean opinion that there were no internal control deficiencies. Pg 34, Management letter required by the Auditor Gen required.

Pg 36, another requirement by F.S. re: investment policies. That's it.

**G. ATTORNEY REPORT:** Discussed the tour TA gave him of the culvert issues in Town. Houses built without culverts; failed culverts that need replacing, or set to wrong elevation or wrong size. He reviewed code and blocked culverts are not referenced. Who is responsible? It should be the homeowner so drainage is free flowing. Highly recommend council amend code to allow lien rights when the homeowner refuses to comply. CM Vail asked about notification – is it in code. Atty said there is language in the code but it needs to be stricter. CM Korn said he represents District 4, and there are places that do not have culverts on Weber. Town replaced all the homeowner's culverts on the west side, north of Hall. CM Korn said we need to make it doable for the homeowner to pay - give those 5 years to pay back. CM Vail agrees. CM Vail said he agrees if the Town does it, they should be able to recover costs. Chair said Council can direct Atty to draft ordinance – Atty said the lien rights at a minimum. He asked about maintenance. Kind of like mowing. He thinks every resident should do that. TA agreed with Atty and Mayor. Atty said town has the inherent ability to “help” residents clean the culverts, as it will help the entire system.

**H. STAFF REPORTS: ADMINISTRATOR:**

FDOT and Moffit Nichols is holding a PH re: the improvements on SR514. Nationwide, traffic incidents are going down. Not in Malabar. Malabar had five fatalities in the last 5 years. Feds consider each fatality worth 2.5Mil. It is critical to the safety of our residents. CM Korn said we need to also have turn lanes on Corey and Weber north bound. FDOT is only talking about turn lanes on Malabar Road. Had a meeting last Thursday with Moffit Nichols. This project has been going on since 1998 from the records he has seen. Urged all to attend.

Several months ago, they made adjustments in the permit fees and is happy to report we may end the year on the positive side.

Thanked North Florida Emulsion for fixing Weber and Glatter even though the warranty expired 9/15. Lastly, he read his report. (attached). If you double the advalorum. For the last 20 years, we have done the same thing. If you want the same results, continue to do the same thing. Strongly recommend Council set the tentative millage at 5mil. He referenced the millages from all the other cities.

He referred to spreadsheet he had placed before them. Every year other than one (2011) we have had spent more than we brought in. He is proposing we increase the millage to 5mils in order to comply with TRIM requirements. That increase could be offset by having one less cup of coffee per day. We can adjust it down accordingly during the workshop process. CM Korn said GV has lower millage but they have special assessments. We are not providing the necessary services. TA said he would gladly pay more to keep his car clean and not breathe the dust and pay for alignments. That is not even two months' cell phone bills. Solve this problem with the roads.

**CLERK:** nothing

**FIRE CHIEF:**

**BOARD REPORTS: P&Z,** Chair Pat Reilly stated they have been slow the last two months. They are also working on the 5-year plan

**PARK & RECREATION,** no rep

**T&G COMMITTEE,** Drew Thompson Chair, quick update. Trying to plan for the future.

Complemented Hoyt about thinking outside the box. They are looking at connectivity with other

towns. Enhance Malabar and other communities. Tremendous amount of land is off tax roll by EELp. Trails will be a limited commodity. Challenged to plan for the future. Town has a fiduciary responsibility to do what is needed and provide for the needed services. He applauds what TA Hoyt proposed in his report. Looking forward to getting the septic system in at trailhead. They will be coming before Council for a lightening structure for the Cameron Preserve. It will provide a safe place for hikers and cyclists to wait out quick moving lightning storms. Cameron Preserve is between the two Malabar Scrub sanctuaries. Questions? CM Vail asked about north Rocky Point Road. Drew said he was down there and saw a load of firewood ready for the next island party. He understands they are still trying to determine who has rights to the area.

### **EVENTS COMMITTEE**

Mayor asked for consensus of the organization statement he had handed out re: The Events Committee. Council consensus given.

Vice-Chair of Events Committee, Ricky Bisnath, commits 100% of his support to this committee to put on events that will benefit the Town. In addition, they want to be a standalone committee. They have a good group of people to do this. They are going to make it happen. Let us put on the events and make more money for the Town. Mayor said they would have their meetings on the 4<sup>th</sup> Thursday of month, report to Council, and convey minutes and agendas to the Town in a timely manner.

**I. PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) **Five (5) Minute Limit per Speaker.**

**Added item 1.5** CM Dick Korn – In the past when we have been asked to vacate and Set policy of not vacating unless it benefits the public. It may come at the request of a person but if it not a benefit to the town it should not be vacated. Atty said that is the policy; you cannot sell it or barter it, but if no longer serves a public need, it can be vacated.

### **J. PUBLIC HEARINGS/SPECIAL ORDERS: 2**

**2. Referendum Question for Ballot – Single District Voting 2<sup>nd</sup> Reading of Ord 2016-01**  
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; REPEALING ORDINANCE 2014-09; CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD CONTINUE TO PARTICIPATE IN THE BREVARD COUNTY MUNICIPAL SERVICE TAXING UNIT (MSTU) FOR LAW ENFORCEMENT; CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD AMEND THE CHARTER, SECTION 2.02 TO CHANGE THE CURRENT WAY TOWN COUNCIL MEMBERS ARE ELECTED FROM “AT-LARGE” TO BEING ELECTED “BY DISTRICT”; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Adoption on 2nd Reading

PH opened.

Pat Reilly asked about periodic and would like to change it to a specific. If it is voted in favor, then the ordinance requiring it on ballot every two years should be repealed.

CM Vail said that was his requirement. At some point in the future, we may be able to have our own police dept. Eliminate the “periodic” in the second questions. If it is done separately, it will increase the cost for five ballots.

PH closed.

Discussion: Mayor gave history of how it was actually being done. Before the only correct election was for the Mayor as it was “at-large” because the Supervisor of Elections did not have the ability to determine five separate districts.

**MOTION:** CM Vail / CM Kohler to approve second reading of Ord 2016-01.

**MOTION: (on amendment)** CM Krieger / Vail amend motion to remove the 2<sup>nd</sup> reference to Brevard Cty MSTU for law enforcement in the instructions. **Vote:** All Ayes.

**ROLL CALL VOTE** on original motion: CM Ball, Excused; CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Kohler, Aye. Motion approved 4 to 0.

### **3. Request to Vacate Portion of Johnston Avenue Reso 08-2016**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA VACATING AND ABANDONING AN UNDEVELOPED STREET RIGHT-OF-WAY MORE PARTICULARLY DESCRIBED IN THIS RESOLUTION AS EXHIBIT "A"; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:**

Agenda Report No 3

**Recommendation:** Request Action on Reso 08

PH opened –

Robert Marks, AAA Storage, applicant, just trying to increase the SF of his lot so he can join his 8.5 acres to the 1.5 acres he just bought. Without joining the parcels, he will not be able to expand and build a new building, which would increase the tax revenue for the Town.

Doug Gerlock, has property in the area. He is still kind of locked in. He was hoping that Mary Street would be improved. He lost his access since the pie shaped piece (Carmichael) was sold to AAA; he used it to access his parcels 5-8. It will create a real hardship to him. This would hurt him. Maybe he is willing to sell. He cannot get Mary St improved without paying 50K.

Alisha Kline: they own the property just west of AAA. They are not opposed to it.

Pat Reilly as Chair of P&Z. Voted 3 to 2 to deny. Another point that was proposed was to move the ROW to the north side of the pie shaped parcel. Pat said on the positive side if he joins the applicant if the property and improves it we will get more tax revenue. He voted against it because he asked if the new parcel would be, accessed W. Railroad Avenue and the applicant said yes.

Applicant Robert Marks: Never got the chance to meet his new neighbors. Johnston only got cleared because he cleared it. At no cost to Town, he is planning to improve W. Railroad Avenue. Atty Bohne stated that you can do that separately but not as a condition of the vacate.

PH closed

**CM Vail / CM Kohler to approve vacate.** Discussion. CM Vail suggested moving the ROW to the north side of the pie shaped parcel he wants to develop. Much discussion on why W. Railroad Ave was being used to benefit his business.

**MOTION:** CM Korn / CM Krieger to table to next meeting August 1st. **Vote:** All Ayes

**Added Item 3.5** Mr. Fuller and his issue with a BTR that has contradictory. He applied for BTR from Malabar, it was issued, and he has received his renewal notice. When he took Malabar's BTR to the County the County said a FFL (Fla Firearm License) was required. Land Usage. If he was repairing, something is that manufacturing. He is up against a time crunch. If you "Transfer" the gun. Atty said it is absurd. Mr. Fuller needs a letter saying customers could come to home, can have parts delivered and will not conflict with residents. He is repairing firearms. Fuller trying to do it right. Atty can draft letter. TA, what is timeline? 60 days and they have used half. TA said he would have a letter authorization for operating from his home. TA acknowledged that a letter would be authorized per his request.

**J. ACTION ITEMS:****ORDINANCES FOR FIRST READING: 2;**

**4. ORDINANCE NO. 2016-02** AN ORDINANCE OF THE TOWN OF MALABAR, FOR CODIFICATION, SEVERABILITY AND CONFLICTS; BREVARD COUNTY, FLORIDA; REPEALING SECTION 13-38(c) RELATING TO VARIANCES AUTHORIZED BY THE BOARD OF ADJUSTMENT; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Approval of Ord 2016-01 for 1<sup>st</sup>

CM Vail / CM Korn to approve 1<sup>st</sup> Reading

**ROLL CALL VOTE:** CM Ball, Excused; CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Kohler, Aye. Motion approved 4 to 0.

**5. ORDINANCE NO. 2016-03– Recommendation from P&Z**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE III TABLE 1-3.2 ELIMINATING THE CONDITIONAL USE “C” FOR HOUSES OF WORSHIP WITHIN RESIDENTIAL ZONING DESIGNATIONS.; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Approval of Ord 2016-03 for 1<sup>st</sup> Reading

**Motion:** CM Vail / CM Kohler to send it back to P&Z to change the P to a C in R/LC. Vote on amendment. **Vote:** Ayes

**MOTION:** to approve the main motion.

**ROLL CALL VOTE:** CM Ball, Excused; CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Kohler, Aye. Motion approved 4 to 0.

**RESOLUTIONS:**

**6. Resolution Accepting the FY 2014/2015 Financial Audit (Reso 07-2016)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING ACCEPTANCE OF THE ANNUAL AUDIT REPORT PROVIDED FOR FISCAL YEAR 2014/2015 BY THE AUDIT FIRM OF WITHUM SMITH & BROWN, PC (FORMALLY KNOWN AS AVERETT WARMUS DURKEE; AND PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

**ROLL CALL VOTE:** CM Ball, Excused; CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Kohler, Aye. Motion approved 4 to 0.

**Comment from Ricky Bisnath, Vice-Chair of Events Committee:** The events committee wants more show cars with big trucks and motorcycles; wants to use more space at the park, introduce new things, and keep later hours use the SandHill Trailhead

**MISCELLANEOUS:**

**7. Set Preliminary Maximum Millage and Date for 1<sup>st</sup> Public Hearing on the 2016/2017 Budget – DR-420**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

**MOTION:** CM Vail / CM Korn to approve 5mil as the Preliminary Maximum Millage and set the date of 9/6/16 for the 1<sup>st</sup> PH.

Discussion:

**VOTE:** Ayes, 3; Nay, 1 (Krieger).

**8. Select Voting Delegate for the FLC Conference**

**Exhibit:** Agenda Report No. 8

**Recommendation:** Request Action

**MOTION:** CM Kohler / CM Vail to appoint CM Kohler as voting delegate at the FLC conference in August. Discussion: none. **VOTE:** All Ayes.

**9. Response to DEO re: Comp Plan – Recommendation by P&Z**

**Exhibit:** Agenda Report No. 9

**Recommendation:** Request Action

**MOTION:** CM Kohler / CM Vail to approve the recommendations of P&Z Bd to notify DEO that we will be amending the Comp Plan to remove School Concurrency with no specifics. Discussion: Discussion about the changes to the FLUM and removing School Concurrency from the Elements in the Comp Plan. **VOTE:** All Ayes.

**10. Request from West Melbourne to Change SCLC Hosting Month to June**

**Exhibit:** Agenda Report No. 10

**Recommendation:** Discussion

**MOTION:** CM Korn / CM Kohler to approve the change.

Discussion: Clerk said that they want to do something outdoors and June is too hot. G-V has no objections. **VOTE:** All Ayes.

**11. Approve Stops Signs on Corey and Weber Roads**

**Exhibit:** Agenda Report No. 11

**Recommendation:** Discussion

**MOTION:** CM Korn / CM Vail in the interest of public safety to approve adding the additional stop signs.

Discussion: CM Korn said we have to do this one at a time. Begin the process now. Let TA come back with details and schedule.

**MOTION:** Krieger to table / no 2<sup>nd</sup>.

**VOTE** on original Motioms: Ayes 3; Nay 1 (Krieger).

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME 9:20pm.

**K. DISCUSSION/POSSIBLE ACTION:**

**12. Discuss Amending Code to Remove Subdivisions as Exempt from Excavating**

**Exhibit:** Agenda Report No. 12

**Recommendation:** Discussion

**MOTION** CM Krieger / CM Kohler to table. **VOTE:** All Ayes

**MOTION:** CM Krieger / CM Vail to extend meeting ten minutes. **VOTE:** All Ayes

**L. PUBLIC COMMENTS: General Items (Speaker Card Required)**

Pat Reilly said what info are you going to get in the next 2 weeks?

Alisha Kline again asked about what would happen if commercial traffic. Her house is very close

**M. REPORTS – MAYOR AND COUNCIL MEMBERS**

1 – Krieger will be bringing SW back with more information

2- Vail asked about the annual MSTU costs when we first adopted it. He agrees with impact fees. Should talking about how much we would have gone.

3- Kohler

4- Korn

5-

Mayor –

TA -

**N. ANNOUNCEMENTS:**

- (2) Vacancies on the Board of Adjustment;
- (3) Vacancies on the Park and Recreation Board;
- (1) Vacancy on the Planning & Zoning Board

**O. ADJOURNMENT:**

**P. ADJOURNMENT:**

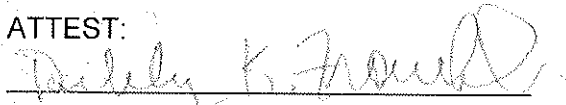
There being no further business to discuss, Chair stated without objection the meeting is adjourned. The meeting adjourned at 10:28 PM.

BY: 

Mayor Phillip R. Crews, Council Chair

(seal)

ATTEST:



Debby K. Franklin, C.M.C.  
Town Clerk/Treasurer

Date Approved: 8/1/2016